

1 Steven R. Blackburn, State Bar No. 154797  
2 Leslie J. Mann, State Bar No. 95467  
3 Rachel S. Hulst, State Bar No. 197330  
4 EPSTEIN BECKER & GREEN, P.C.  
5 One California Street, 26th Floor  
6 San Francisco, California 94111-5427  
7 Telephone: 415.398.3500  
8 Facsimile: 415.398.0955  
9 sblackburn@ebglaw.com  
10 lmann@ebglaw.com  
11 rulst@ebglaw.com

12 Attorneys for Defendant  
13 LUCENT TECHNOLOGIES INC.

14 **ORIGINAL  
FILED**

15 **JUL 20 2007**

16 **RICHARD W. WIEKING**  
17 CLERK, U.S. DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 DEPARTMENT OF FAIR EMPLOYMENT  
22 AND HOUSING, an agency of the State of  
23 California,

24 Plaintiff,

25 v.  
26 LUCENT TECHNOLOGIES INC., and;  
27 DOES ONE through THIRTY, Inclusive,

28 Defendants.

29 STEVEN J. CARAUDDO

30 Real Party in Interest.

31 **CASE NO.**

32 **NOTICE OF REMOVAL OF ACTION**  
33 **UNDER 28 U.S.C. § 1441(B)**

34 **(DIVERSITY JURISDICTION)**

35 PLEASE TAKE NOTICE THAT Defendant LUCENT TECHNOLOGIES INC.  
36 ("Defendant") hereby removes to this Court the state court action described below.

37 1. On or about June 27, 2007, Plaintiff CALIFORNIA DEPARTMENT OF FAIR  
38 EMPLOYMENT AND HOUSING ("Plaintiff") filed its Complaint in the Superior Court of the  
39 State of California for the County of Alameda, entitled CALIFORNIA DEPARTMENT OF  
40 FAIR EMPLOYMENT AND HOUSING v. LUCENT TECHNOLOGIES INC., Case No. RG-  
41 07-332892. A copy of the Complaint served on Defendant is attached hereto as Exhibit A. A  
42 copy of the Answer served by Defendant is attached as Exhibit B. Defendant is informed and

1 believes, and thereon alleges, that other than the pleadings attached to this notice of removal,  
2 there have been no further pleadings, process, or orders filed in this action.

3       2. The first date upon which Defendant received a copy of the Summons and  
4 Complaint, and thus, first received notice that this action was subject to removal on the basis of  
5 diversity jurisdiction was July 9, 2007. Plaintiff's Notice and Acknowledgment of Receipt  
6 states the Summons and Complaint were served by mail on July 3, 2007. Exhibit C, Notice and  
7 Acknowledgment of Receipt.

8       3. This is a civil action over which this Court also has original jurisdiction under  
9 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendant pursuant to  
10 provisions of 28 U.S.C. § 1441(b), because this is an action between citizens of different states  
11 and the amount in controversy exceeds the sum of \$75,000. Plaintiff's wrongful termination  
12 claim exceeds \$75,000 based on plaintiff's lengthy list of claimed compensatory and punitive  
13 damages (loss of pay, benefits of employment, emotional distress, pain and suffering)  
14 combined with a claim for injunctive relief. Accordingly, Plaintiff has admitted that the  
15 amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

16       4. Defendant is informed and believes that the Real Party in Interest, Steven J.  
17 Caraudo is now and was at the time this lawsuit was filed a resident in Santa Clara County,  
18 California and citizen of the State of California.

19       5. Defendant is now and was at the time this lawsuit was filed incorporated under  
20 the laws of the State of Delaware, and having its principal place of business in New  
21 Providence, New Jersey and is the only defendant that has been served with a summons and  
22 complaint in this action. Accordingly, Defendant is not a citizen of the State of California,  
23 where the State Court action is pending.

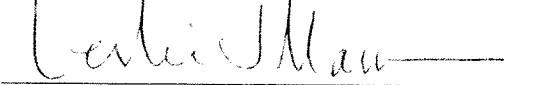
24  
25  
26  
27  
28

1  
2       6. This Notice of Removal is timely, as it was filed within 30 days of the date  
3 Defendant received notice that this action was subject to removal.

4 DATED: July 20, 2007

EPSTEIN BECKER & GREEN, P.C.

5 By:

6   
7 STEVEN R. BLACKBURN  
8 LESLIE J. MANN  
9 RACHEL S. HULST  
10 Attorneys for Defendant  
11 LUCENT TECHNOLOGIES INC.

# **EXHIBIT A**

**SUM VS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
 LUCENT TECHNOLOGIES, INC.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency  
 of the State of California

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda County Superior Court  
 1225 Fallon Street  
 Oakland, CA, 94612  
 René C. Davidson Alameda County Courthouse

CASE NUMBER:  
 Número del Caso) 07 = 332893

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Susan Saylor  
 Department of Fair Employment & Housing (DFEH)  
 Oakland Legal Unit  
 Oakland, CA 94612

(510) 873-6457

DATE:

(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
 (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):

under:  CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

CCP 416.60 (minor)

CCP 416.70 (conservatee)

CCP 416.90 (authorized person)

4.  by personal delivery on (date):

1 PAUL R. RAMSEY (#155062)  
 2 Chief Counsel  
 2 SUSAN SAYLOR (#154592)  
 3 Senior Staff Counsel  
 3 DEPARTMENT OF FAIR EMPLOYMENT  
 4 AND HOUSING, Oakland Legal Unit  
 4 1515 Clay Street, Suite 701  
 5 Oakland, CA 94612-1460  
 5 Telephone: (510) 873-6457  
 6 Facsimile: (510) 873-0840  
 6  
 7 Attorneys for Plaintiff, DFEH  
 7 (Fee Exempt, Gov. Code, § 6103)

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **IN AND FOR THE COUNTY OF ALAMEDA**

10  
 11 DEPARTMENT OF FAIR EMPLOYMENT ) Case No. C 07 - 3328 92  
 12 AND HOUSING, an agency of the State of )  
 12 California,  
 13 Plaintiff,  
 14 vs.  
 15 LUCENT TECHNOLOGIES, INC., and;  
 16 DOES ONE through THIRTY, Inclusive,  
 17 Defendants.  
 18 STEVEN J. CARAUDDO,  
 19 Real Party in Interest.  
 20  
 21  
 22

---

23 Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING alleges the  
 24 following against Defendants LUCENT TECHNOLOGIES, INC. and DOES ONE through  
 25 THIRTY, inclusive, on behalf of Real Party in Interest STEVEN J. CARAUDDO:  
 26 //  
 27



## PARTIES

1. Plaintiff, DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (hereafter “Department” or “DFEH”), is the state agency charged with enforcing the Fair Employment and Housing Act (“FEHA”), set forth in Government Code section 12900 et seq. The Department’s enforcement of the FEHA is an exercise of the police power of the State of California, to protect the civil rights of all Californians to seek, obtain, and hold employment without discrimination or abridgment on account of, inter alia, disability. (Gov. Code, §§ 12920, 12926, subd. (i), 12926.1, and 12940, subds. (a) (k), (m), and (n).)

2. At all times relevant to this complaint, Real Party in Interest STEVEN J. CARAUDDO (hereafter "Real Party" or "Mr. Caraudo"), was working within the County of Alameda, California.

3. Defendant LUCENT TECHNOLOGIES, INC. (hereafter "Defendant" or "Lucent Technologies") is now and was, at all times relevant to this complaint, a business entity operating under the laws of the State of California, and conducting business in the County of Alameda, California.

4. DOES ONE through THIRTY, inclusive, are sued herein pursuant to Code of Civil Procedure section 474. The Department is ignorant of the true names or capacities of the Defendants sued herein under fictitious names DOES ONE through THIRTY, inclusive. The Department will amend this complaint to allege their true names and capacities when the same are ascertained.

5. The Department is informed and believes and thereon alleges that, at all times mentioned herein, each and every Defendant is and was, in doing the things complained of herein, the agent and/or employee of their co-defendants herein and was acting within the scope of said agency, service, employment, and/or representation, and that each and every Defendant herein is jointly and severally responsible and liable to the Real Party for the damages hereinafter alleged.

11

11

27



**JURISDICTION AND VENUE**

6. The Department realleges, and fully incorporates herein by reference each and every  
 3 allegation contained in paragraphs 1 through 5, inclusive, as if fully set forth herein.

4. This action arises under the FEHA, specifically, Government Code section 12940,  
 5 subdivisions (a), (k), (m), and (n).

6. Defendant Lucent Technologies is an employer within the meaning of Government  
 7 Code section 12940, subdivisions (a), (k), (m), and (n), and 12926, subdivision (d), in that it  
 8 regularly employs five or more persons.

9. On or about May 9, 2006, Real Party filed a verified complaint in writing with the  
 10 Department (known as the “DFEH Complaint”), alleging that Lucent Technologies had committed  
 11 unlawful employment practices against him, in violation of the FEHA, within the preceding year. A  
 12 true and correct copy of the DFEH Complaint is attached to this Complaint as “Exhibit 1.”

13. On May 8, 2007, the Department issued an Accusation before the California Fair  
 14 Employment and Housing Commission (hereafter “Commission”), charging Defendant Lucent  
 15 Technologies with unlawful employment practices in violation of the FEHA.

16. Pursuant to Government Code section 12965, subdivision (c)(1), Defendant Lucent  
 17 Technologies elected to have its case adjudicated in civil court in lieu of a hearing before the  
 18 Commission, and so notified the Department in writing, on or about June 1, 2007. A true and correct  
 19 copy of “Defendant’s Notice of Defense and Election to Transfer Proceedings to Court” is attached  
 20 hereto as “Exhibit 2” and incorporated herein by this reference.

21. The Department has withdrawn its Accusation and has timely filed this Complaint  
 22 pursuant to Government Code section 12965, subdivision (c)(2).

23. The harm that is the subject of this Complaint occurred in the County of Alameda.

24. The amount of damages sought by this Complaint exceeds the minimum  
 25 jurisdictional limits of this court.



**FACTUAL ALLEGATIONS**

15. The Department realleges and incorporates herein by reference each and every  
 3 allegation contained in paragraphs 1 through 14, inclusive, as if fully set forth herein.

16. Steven J. Caraudo was employed by Defendant Lucent Technologies (or its  
 5 predecessor, Western Electric) as an "Installer" for approximately 40 years, from 1966 to 2006. Mr.  
 6 Caraudo worked out of Defendant's Hayward offices, where he would be assigned to various client  
 7 locations to install telecommunications switching equipment.

17. On or about January 19, 2005, Mr. Caraudo was breaking down some large boxes at  
 9 Defendant's Hayward warehouse. By the end of the day, his back was stiff; by the time he woke up  
 10 the next morning, he felt unable to get out of bed. Mr. Caraudo was experiencing back pain, and  
 11 for several days he called in sick. When he visited the doctor, he was diagnosed with a low back  
 12 strain. Upon further investigation, including an X-ray and MRI, it was revealed that Real Party was  
 13 suffering from long-term damage to his spine and lower back discs.

18. Ultimately, Real Party was diagnosed with "Lumbar degenerative disc disease"  
 15 caused by "cumulative microtrauma to the lumbar disc." As Robert Harrison, M.D., M.P.H., Clinical  
 16 Professor of Medicine at the University of California, San Francisco ("UCSF"), later explained: "On  
 17 the date of injury, Mr. Caraudo was engaged in heavy lifting with twisting of the lower back. This  
 18 resulted in acute lumbosacral sprain superimposed on underlying, long-standing, work-related  
 19 degenerative disc disease of the lumbosacral spine."

20. Because of his disability (lumbar degenerative disc disease), Real Party began a leave  
 21 of absence in early 2005. While on leave, he received treatment for his back, including pain  
 22 medication, chiropractic treatments, and physical therapy.

23. At all times relevant to this complaint, Mr. Caraudo has been a person with a  
 24 disability as defined by Government Code sections 12926, subdivision (k), which includes those  
 25 with a record of having a disability and those that are perceived as having a disability.

26. As of January 2006 Mr. Caraudo's treating physician, Dr. Allen Kaisler-Meza,  
 27 declared that Real Party was able to return to work. On or about January 17, 2006, Dr. Kaisler-Meza

1 determined that Real Party was able to lift and carry up to 20 lbs. continuously; up to 21-50 lbs.,  
 2 occasionally; and, between 51-100 lbs., never. On that same date, Dr. Kaisler-Meza completed a  
 3 Workers' Compensation report which stated that Mr. Caraudo: "Will return to full duty but with  
 4 restriction in open market of no lifting greater than 30 lbs P/S, MMI next visit."

5       22. On or about January 25, 2006, Mr. Caraudo presented himself at Defendant's  
 6 Hayward office for work. His supervisor Claudine Strange told him that he had not been medically  
 7 cleared to return to work, and sent him home.

8       23. On or about January 27, 2006, Defendant terminated Mr. Caraudo's employment,  
 9 purportedly because he was unable to perform the essential functions of his job.

10      24. An undated job description for the Installer/Technician position lists the following  
 11 relevant requirements: "3. LIFTING: Floor to Waist: (Occasionally) May lift up to 50 pounds from  
 12 floor to waist when working with 750 cable spools and installation components. Waist to Overhead:  
 13 (Frequently) Must lift up to 30# when running cable, placing components for installation, etc. 4.  
 14 CARRYING: (Frequently) Carry up to 50# for up to 100' to move cable rolls, component parts,  
 15 equipment, etc."

16      25. Current and former employees of Lucent Technologies, including Real Party, have  
 17 informed the Department that the lifting restrictions are not as great as the job description suggests,  
 18 and that, when lifting is required, the assistance of a fellow employee or a lifting device may be  
 19 available.

20      26. On or about January 31, 2006, Mr. Caraudo underwent a Functional Capacity  
 21 Evaluation ("FCE"), where he was found to possess the ability to: Waist height lift and carry: 45 lbs;  
 22 Floor to counter lift: 45 lbs; Overhead lift: 45 lbs; Pushing a sled: 90 lbs; Pulling a sled: 90 lbs.  
 23 The physical therapist who performed the FCE reported that: "Patient shows excellent potential to go  
 24 back to work. No work restrictions are recommended except those which are standard of the  
 25 company. Patient shows eagerness and willingness to go back to work."

26

27

27. On or about April 11, 2006, Real Party's Workers' Compensation attorney sent a letter to Defendant requesting that it engage in a good faith, interactive process. To date, Lucent Technologies has made no response to this request.

28. At least as of the date that he presented himself at Defendant's Hayward office for work (January 25, 2006) and continuing to the present, Real Party was able to perform the essential functions of the position of an Installer, with or without reasonable accommodation.

## **FIRST CAUSE OF ACTION**

#### **Termination Because of Disability**

(Gov. Code, § 12940, subd. (a))

29. The Department realleges, and incorporates herein by reference, each and every allegation contained in paragraphs 1 through 28, as if fully set forth herein.

30. Government Code section 12940, subdivision (a), makes it an unlawful employment practice for an employer to terminate an employee because of his disability.

31. By terminating Mr. Caraudo's employment because of his disability, Defendants, and each of them, have engaged in unlawful employment discrimination against him, in violation of Government Code section 12940, subdivision (a).

32. As a direct result of the unlawful employment practices of Defendants, and each of them, as alleged herein, Mr. Caraudo has lost wages and other benefits of employment in an amount to be proven at trial.

33. As a further and direct result of the unlawful practices of Defendants, and each of them, as herein alleged, Mr. Carauddo has suffered anxiety, frustration, emotional distress, and injury in an amount to be proven at the time of trial.

34. The conduct of Defendants, and each of them, as herein alleged, was malicious, oppressive, or fraudulent, or taken in conscious disregard of the rights, health, safety, and economic condition of Mr. Caraudo, as defined in Civil Code section 3294, in that Defendants willfully and intentionally, and without just cause, deprived him of his civil rights as an employee under the laws of the State of California, entitling him to an award of exemplary and punitive damages."



1       35. The Defendants, and each of them, by terminating Mr. Caraudo's employment, have  
2 engaged in, and by their refusal to comply with the law when requested, have demonstrated that they  
3 will continue to engage in, the pattern and practice of unlawful employment discrimination on the  
4 basis of disability unless and until they are enjoined, pursuant to the police power granted by  
5 Government Code section 12920 and 12920.5, and pursuant to Government Code section 12965,  
6 subdivision (c)(3), from failing or refusing to comply with the mandates of the Fair Employment and  
7 Housing Act, California Government Code section 12900 et seq.

## **SECOND CAUSE OF ACTION**

**Failure to Make Reasonable Accommodation for Known Physical or Mental Disability**  
**(Gov. Code §12940 subd. (m))**

36. The Department realleges, and incorporates herein by reference, each and every allegation contained in paragraphs 1 through 28, as if fully set forth herein.

37. Government Code section 12940, subdivision (m), provides that it is an unlawful employment practice for an employer to fail to make reasonable accommodation for the known physical disability of an employee.

38. By failing to accommodate Mr. Caraudo's disability (lumbar degenerative disc disease), Defendants engaged in unlawful employment discrimination against him in violation of Government Code section 12940, subdivision (m).

39. As a direct result of the unlawful employment practices of Defendants, and each of them, as alleged herein, Mr. Caraudo has lost wages and other benefits of employment in an amount to be proven at trial.

40. As a further and direct result of the unlawful practices of Defendants, and each of them, as herein alleged, Mr. Caraudo has suffered anxiety, frustration, emotional distress, and injury in an amount to be proven at the time of trial.

41. The conduct of Defendants, and each of them, as herein alleged, was malicious, oppressive, or fraudulent, or taken in conscious disregard of the rights, health, safety, and economic condition of Mr. Caraudo, as defined in Civil Code section 3294, in that Defendants willfully and



1 intentionally, and without just cause, deprived him of his civil rights as an employee under the laws  
 2 of the State of California, entitling him to an award of exemplary and punitive damages."

3       42. The Defendants, and each of them, by failing to accommodate Mr. Caraudo's  
 4 disability (lumbar degenerative disc disease), and by their refusal to comply with the law when  
 5 requested, have demonstrated they will continue to engage in, the pattern and practice of unlawful  
 6 employment discrimination described herein unless and until they are enjoined, pursuant to the  
 7 police power granted by Government Code section 12920 and 12920.5, and pursuant to Government  
 8 Code section 12965, subdivision (c)(3), from failing or refusing to comply with the mandates of the  
 9 Fair Employment and Housing Act, California Government Code section 12900 et seq.

**THIRD CAUSE OF ACTION**

**Failure to Engage in a Timely, Good Faith, Interactive Process**

(Gov. Code, § 12940, subd. (n))

13       43. The Department realleges, and incorporates herein by reference, each and every  
 14 allegation contained in paragraphs 1 through 28, as if fully set forth herein.

15       44. Government Code section 12940, subdivision (n), provides that it is an unlawful  
 16 employment practice for an employer to fail to engage in a timely, good faith, interactive process  
 17 with an employee to determine effective reasonable accommodations, if any, in response to a request  
 18 for reasonable accommodation by an employee with a known physical or mental disability.

19       45. By failing to fully engage in timely and good faith dialogue with Mr. Caraudo about  
 20 how he might be able to return to the position of Installer with or without a reasonable  
 21 accommodation, Defendants are liable for unlawful employment practices against him, in violation  
 22 of Government Code section 12940, subdivision (n).

23       46. As a direct result of the unlawful employment practices of Defendants, and each of  
 24 them, as alleged herein, Mr. Caraudo has lost wages and other benefits of employment in an  
 25 amount to be proven at trial.

26       47. As a further and direct result of the unlawful practices of Defendants, and each of  
 27 them, as herein alleged, Mr. Caraudo has suffered anxiety, frustration, emotional distress, and  
 injury in an amount to be proven at the time of trial.

48. The conduct of Defendants, and each of them, as herein alleged, was malicious, oppressive, or fraudulent, or taken in conscious disregard of the rights, health, safety, and economic condition of Mr. Carauddo, as defined in Civil Code section 3294, in that Defendants willfully and intentionally, and without just cause, deprived him of his civil rights as an employee under the laws of the State of California, entitling him to an award of exemplary and punitive damages."

49. The Defendants, and each of them, by failing to engage in a timely, good faith, interactive process with an employee to determine effective reasonable accommodations, if any, in response to Mr. Caraudo's request for reasonable accommodation, have engaged in, and by their refusal to comply with the law when requested, have demonstrated they will continue to engage in, the pattern and practice of unlawful employment discrimination on the basis of disability unless and until they are enjoined, pursuant to the police power granted by Government Code section 12920 and 12920.5, and pursuant to Government Code section 12965, subdivision (c)(3), from failing or refusing to comply with the mandates of the Fair Employment and Housing Act, California Government Code section 12900 et seq.

## **FOURTH CAUSE OF ACTION**

**Failure to Take All Reasonable Steps to  
Prevent Discrimination from Occurring in the Workplace  
(Gov. Code, § 12940, sub. (k))**

50. The Department realleges, and incorporates herein by reference, each and every allegation contained in paragraphs 1 through 28, as if fully set forth herein.

51. Government Code section 12940, subdivision (k) provides that it is an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

52. For their failure to take all reasonable steps necessary to prevent discrimination from occurring, Defendants, and each of them, as herein alleged, are liable for unlawful employment practices against Mr. Caraudo, in violation of Government Code section 12940, subdivision (k).



53. As a direct result of the unlawful employment practices of Defendants, and each of them, as alleged herein, Mr. Caraudo has lost wages and other benefits of employment in an amount to be proven at trial.

54. As a further and direct result of the unlawful practices of Defendants, and each of them, as herein alleged, Mr. Caraudo has suffered anxiety, frustration, emotional distress, and injury in an amount to be proven at the time of trial.

55. The conduct of Defendants, and each of them, as herein alleged, was malicious, oppressive, or fraudulent, or taken in conscious disregard of the rights, health, safety, and economic condition of Mr. Carauddo, as defined in Civil Code section 3294, in that Defendants willfully and intentionally, and without just cause, deprived him of his civil rights as an employee under the laws of the State of California, entitling him to an award of exemplary and punitive damages.”

56. The Defendants, and each of them, by failing to take all reasonable steps necessary to prevent discrimination from occurring, have engaged in, and by their refusal to comply with the law when requested, have demonstrated they will continue to engage in, the pattern and practice of unlawful employment discrimination on the basis of disability unless and until they are enjoined, pursuant to the police power granted by Government Code section 12920 and 12920.5, and pursuant to Government Code section 12965, subdivision (c)(3), from failing or refusing to comply with the mandates of the Fair Employment and Housing Act, California Government Code section 12900 et seq. .

## **PRAYER FOR RELIEF**

## All Causes of Action

**WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

1. That the court order Defendants, and each of them, to reinstate Mr. Caraudo to the position of Installer, or in lieu of reinstatement to pay his back pay, front pay, and other benefits of employment, according to proof, with interest at the applicable legal rate.

2. That the court order Defendants, and each of them, to pay to Real Party damages for his emotional distress, nervous pain, and suffering resulting from Defendant's unlawful conduct;

3. That the court order Defendants to pay punitive damages to Mr. Caraudo, according



1 to proof;

2 4. That the court order injunctive relief as follows:

3 a. Require Defendants to cease and desist from discriminating against Real Party  
4 and other employees on the basis of physical or mental disability;

5 b. Require Defendants to develop, implement, and disseminate a policy that  
6 clearly advises management and supervisors of their obligation under the FEHA to: (a) make  
7 reasonable accommodations; and, (b) engage in a timely, good faith, interactive process with its  
8 employees to determine effective reasonable accommodations, if any, in response to a request from  
9 an employee with a known physical or mental disability;

10 c. Require Defendants to train all management-level employees, and all  
11 supervisors in the chain of command, regarding Defendant's duties to: (a) make reasonable  
12 accommodations; and, (b) engage in a good faith, interactive process with its employees to  
13 determine what accommodations are appropriate;

14 d. Require Defendants to post an order in a conspicuous place in all work  
15 locations that dispatch Installers in the State of California, stating that Defendant has been found in  
16 violation of the FEHA, and specifying the remedies ordered; and,

17 5. For such other relief as the court deems just and proper.

18

19 Dated: June 26, 2007

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

20

21 PAUL R. RAMSEY  
Chief Counsel

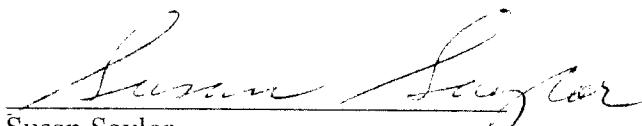
22

23 SUSAN SAYLOR  
Senior Staff Counsel

24

25

By:



Susan Saylor  
Attorneys for the Department

26

27



# **EXHIBIT 1**

**EMPLOYMENT****COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT**

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

DFEH # E200506M1661-00-aeEEOC # 37AA608736**CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC**

COMPLAINANT'S NAME (indicate Mr. or Ms.)

**CARAUDDO, STEVE J. (Mr.)**

ADDRESS

770 Upton Court

CITY/STATE/ZIP

San Jose, CA 95136

TELEPHONE NUMBER (INCLUDE AREA CODE)

(408) 267-2081

COUNTY

Santa Clara

085

COUNTY CODE

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

**LUCENT TECHNOLOGIES**

ADDRESS

1288 San Luis Obispo Blvd.

CITY

Hayward, CA 94544

TELEPHONE NUMBER (INCLUDE AREA CODE)

(510) 475-5055

Alameda

001

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX[ES])

RACE    SEX    DISABILITY    RELIGION    NATIONAL ORIGIN/ANCESTRY    DENIAL OF FAMILY/MEDICAL LEAVE    SEXUAL ORIENTATION

COLOR    AGE    MARITAL STATUS    MEDICAL CONDITION (cancer or genetic characteristics)    OTHER (SPECIFY) \_\_\_\_\_

NO. OF EMPLOYEES/MEMBERS

DATE MOST RECENT OR CONTINUING DISCRIMINATION

RESPONDENT CODE

50

TOOK PLACE (month, day, and year) January 27, 2006

39

THE PARTICULARS ARE:

- I. On January 25, 2006, I was denied accommodation and on January 27, 2006 I was terminated from my position as an Installer. I was hired as an installer on March 7, 1966. At the time I was denied accommodation and terminated from my position as Installer I was making \$28.60 per hour.
- II. Claudine Strange, Operation Area Manager, told me that I would not be allowed to return to work. She refused to discuss the subject with me.
- III. I believe that I was denied accommodation and terminated because of my age 60 and because of my disability (disc injures) for the following reasons:
  - A. I was released to come back to work by the doctor and the therapist who performed my Functional Capacity Exam with very few accommodations and the company failed to return me to work and fired me without giving me a reason.

**RECEIVED**

MAY - 9 2006

Typed and mailed for signature on May 5, 2006.

 I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated May 5, 2006At San Jose, Ca

City

Steve J. Caraudo

COMPLAINANT'S SIGNATURE

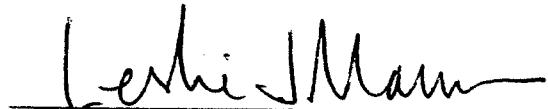
# **EXHIBIT 2**

1 CASE NAME: DFEH v. Lucent Technologies, Inc.  
 2 (Steven J. Carauddo, Complainant)  
 3 CASE NO.: E-200506-M-1661-00-ae

4 **RESPONDENT'S NOTICE OF TRANSFER OF PROCEEDINGS TO COURT**

5 I am a Respondent in this matter. I elect to transfer this proceeding to court in lieu of a  
 6 hearing before the Fair Employment and Housing Commission, pursuant to Government Code  
 7 section 12965, subdivision (c)(1).

8  
 9 Dated: June 1, 2007



10 Respondent's/Representative's Signature

11  
 12 Lucent Technologies, Inc.

13 Respondent(s) [Please print]

14 Leslie J. Mann

15 Representative [Please print]

16 Address of Respondent, or if  
 17 represented, address of Representative

18 1 California Street, Suite 2600

19 Street

20 San Francisco, CA 94111

21 City      State      Zip  
 22 (415)398-3500

23 Telephone number of Respondent, or if  
 24 represented, telephone number of Representative

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
  2. My business address is One California Street, 26th Floor, San Francisco, California 94111-5427.
  3. I served copies of the following documents (specify the exact title of each document served): **RESPONDENT'S NOTICE OF TRANSFER OF PROCEEDINGS TO COURT**
  4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Jean K. Hyams, Esq.  
Boxer Gerson, LLP  
300 Frank H. Ogawa Plaza  
Oakland, CA 94612  
Telephone: (510) 835-8870  
Facsimile: (510) 835-0415

Attorneys for Complainant  
Steven J. Caraudo

James A. McDonald, Esq.  
Law Offices of James A. McDonald  
2072 The Alameda  
San Jose, CA 95128  
Telephone: (408) 241-4402  
Facsimile: (408) 241-4206

Attorneys for Complainant  
Steven J. Caraudo

Ann M. Noel, Executive and Legal Affairs Secretary  
CA Fair Employment and Housing Commission  
455 Golden Gate Avenue, #10600  
San Francisco, CA 94102-7019

## The Fair Employment and Housing Commission

Paul R. Ramsey  
Susan Saylor  
Department of Fair Employment and  
Housing, Oakland Legal Unit  
1515 Clay Street, Suite 701  
Oakland, CA 94612-1460  
Telephone: (510) 873-6457  
Facsimile: (510) 873-0840

### Attorneys for the Department

1       5. a.  **By personal service.** I personally delivered the documents on the date shown  
 2 below to the persons at the addresses listed above in item 4. (1) For a party  
 3 represented by an attorney, delivery was made to the attorney or at the attorney's  
 4 office by leaving the documents in an envelope or package clearly labeled to  
 5 identify the attorney being served with a receptionist or an individual in charge of  
 6 the office. (2) For a party delivery was made to the party or by leaving the  
 7 documents at the party's residence between the hours of eight in the morning and  
 8 six in the evening with some person not less than 18 years of age.

- 9       b.  **By United States mail.** I enclosed the documents in a sealed envelope or  
 10 package addressed to the persons at the addresses in item 4 and (*specify one*):  
 11           (1)  deposited the sealed envelope with the United States Postal Service, with  
 12 the postage fully prepaid on the date shown below, or  
 13           (2)  placed the envelope for collection and mailing on the date shown below,  
 14 following our ordinary business practices. I am readily familiar with this  
 15 business's practice for collecting and processing correspondence for  
 16 mailing. On the same day that correspondence is placed for collection and  
 17 mailing, it is deposited in the ordinary course of business with the United  
 18 States Postal Service, in a sealed envelope with postage fully prepaid.

19       I am a resident or employed in the county where the mailing occurred. The  
 20 envelope or package was placed in the mail at , California.

21       c.  **By overnight delivery.** I enclosed the documents on the date shown below in an  
 22 envelope or package provided by an overnight delivery carrier and addressed to the  
 23 person at the addresses in item 4. I placed the envelope or package for collection and  
 24 overnight delivery at an office or a regularly utilized drop box of the overnight  
 25 delivery carrier.

26       d.  **By messenger service.** I served the documents on the date shown below by  
 27 placing them in an envelope or package addressed to the person on the addresses  
 28 listed in item 4 and providing them to a professional messenger service for service.  
 (A declaration by the messenger must accompany this proof of service or be  
 contained in the Declaration of Messenger below.)

29       e.  **By fax transmission.** Based on an agreement of the parties to accept service by  
 30 fax transmission, I faxed the documents on the date shown below to the fax  
 31 numbers of the persons listed in item 4. No error was reported by the fax machine  
 32 that I used. A copy of the fax transmission, which I printed out, is attached.

33       f.  **By e-mail or electronic transmission.** Based on an agreement of the parties to  
 34 accept service by e-mail or electronic transmission, I caused the documents to be  
 35 sent on the date shown below to the e-mail addresses of the persons listed in item 4.  
 36 I did not receive within a reasonable time after the transmission any electronic  
 37 message or other indication that the transmission was unsuccessful.

38       6. I served the documents by the means described in item 5 on (*date*): June 1, 2007

39       I declare under penalty of perjury under the laws of the State of California that the foregoing is  
 40 true and correct.

41       6/1/2007

42       DATE

43       Virginia Li

44       (TYPE OR PRINT NAME)

45         
 46       (SIGNATURE OF DECLARANT)

Department of Fair Employment And  
Housing  
Attn: Saylor, Susan  
1515 Clay St., Suite 701  
Oakland, CA 94612-2512

-- Third Party --  
Steven J. Carauddo

## Superior Court of California, County of Alameda

Department of Fair Employment a

**Plaintiff/Petitioner(s)**

VS.

Lucent Technologies, Inc.

**Defendant/Respondent(s)**

(Abbreviated Title)

No. RG07332892

### NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER

Unlimited Jurisdiction

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 11/14/2007	Department: 135	Judge: Patrick J. Zika
Time: 03:15 PM	Location: Allen E. Broussard Justice Center Fourth Floor 600 Washington Street, Oakland CA 94607	Clerk: Benilda Nelson Clerk telephone: (510) 268-7956 E-mail: <a href="mailto:Dept.135@alameda.courts.ca.gov">Dept.135@alameda.courts.ca.gov</a> Fax: (510) 267-1521
		Internet: <a href="http://www.alameda.courts.ca.gov">http://www.alameda.courts.ca.gov</a>

### ORDERS

1. You must:
  - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
  - b. Give notice of this conference to any party not included in this notice and file proof of service;
  - c. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
  - d. File and serve a completed Case Management Conference Statement (use of Judicial Council Form CM 110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)
2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.
3. You are further ordered to appear in person\* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
  - a. Referring to ADR and setting an ADR completion date
  - b. Dismissing or severing claims or parties
  - c. Setting a trial date.

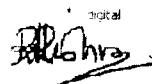
\*Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

### CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 06/29/2007.

By

  
digital

Deputy Clerk

**ASSIGNED FOR ALL PURPOSES TO  
JUDGE Patrick J. Zika  
DEPARTMENT 135**

Counsel are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:  
<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court , which are available at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

The parties are always encouraged to consider using various alternatives to litigation, including mediation and arbitration, prior to the Initial Case Management Conference. The Court may refer parties to alternative dispute resolution resources.

(1) Unrepresented litigants must also comply with pertinent rules, cited above. The Court maintains a Self-Help Center at the Wiley W. Manuel Courthouse, 2nd Floor, 661 Washington St., Oakland. Telephone. (510) 268-7221. (2) Counsel are expected to be familiar and comply with the Statement of Professionalism and Civility, Alameda County Bar Association [www.acbanet.org](http://www.acbanet.org) (click on link at the bottom of the home page). (3) Appearances by attorneys who are not counsel of record are not permitted except for good cause. (4) Except when requested in a particular case, chambers copies of filings are not necessary.

### **Schedule for Department 135**

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions. Parties must confer on agreeable dates consistent with the court's schedules before contacting the clerk to reserve a date.

- Trials generally are held: Mondays through Thursdays at 9:00 a.m.
- Case Management Conferences are held: Initial Case Management Conferences: Wednesdays and Thursdays at 3:15 p.m.
- Case Management Conference Continuances: Fridays at 9:00 a.m.
- Law and Motion matters are heard: Mondays and Tuesdays at 3:15 p.m. Contact the clerk to reserve a date before filing any law and motion matters.
- Settlement Conferences are heard: Fridays at 10:00 a.m.
- Ex Parte matters are heard: Mondays and Wednesdays at 3:00 p.m. Contact the clerk to reserve a date and time before noticing any party.
- Contact the clerk to reserve a date before filing any demurrers. Contact the clerk to reserve a date before filing any summary judgments.

### **Law and Motion Procedures**

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact Department 31 for hearing dates before July 1, 2007 and the Direct Calendar Judge's department as follows for hearing dates after July 1, 2007:

- Motion Reservations for hearing dates after July 1, 2007  
 Email: [Dept.135@alameda.courts.ca.gov](mailto:Dept.135@alameda.courts.ca.gov)

Trial Management Compliance hearings and first day of trial: Fridays at 2:00 p.m.  
 Compliance hearings are heard: Mondays through Thursdays at 3:15 p.m. and  
 Fridays at 9:00 a.m.

- Ex Parte Matters for hearing dates after July 1, 2007  
 Email: Dept.135@alameda.courts.ca.gov

Contact the clerk to reserve a date and time before noticing any party.

### **Tentative Rulings**

The court will issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 135
- Tentative Ruling Line after July 1, 2007: 1-866-223-2244

Dated: 06/28/2007

Executive Officer / Clerk of the Superior Court

By

Deputy Clerk

---

### **CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 06/29/2007

By

Deputy Clerk

**EXHIBIT  
B**

1 Steven R. Blackburn, State Bar No. 154797  
2 Leslie J. Mann, State Bar No. 95467  
3 Rachel S. Hulst, State Bar No. 197330  
4 EPSTEIN BECKER & GREEN, P.C.  
5 One California Street, 26th Floor  
6 San Francisco, California 94111-5427  
Telephone: 415.398.3500  
Facsimile: 415.398.0955  
SBlackburn@ebglaw.com  
Lmann@ebglaw.com  
RHulst@ebglaw.com

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUL 19 2007

CLERK OF THE SUPERIOR COURT  
By Esther Coleman, Deputy

7 Attorneys for Defendant  
LUCENT TECHNOLOGIES INC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

12 DEPARTMENT OF FAIR EMPLOYMENT  
13 AND HOUSING, an agency of the State of  
California.

**Plaintiff:**

CASE NO.: RG 07-332892

**DEFENDANT LUCENT  
TECHNOLOGIES INC.'S ANSWER TO  
COMPLAINT**

6 LUCENT TECHNOLOGIES INC., and;  
DOES ONE through THIRTY, Inclusive.

### Defendants.

9 STEVEN J. CARAUDDO

### Real Party in Interest.

**BY FAX**

[View all posts by admin](#) | [View all posts in category](#)

### Real Party in Interest.

3 Defendant LUCENT TECHNOLOGIES INC., a Delaware corporation (hereinafter  
4 "LUCENT") for itself and no other defendant, answers Plaintiff Department of Fair Employment  
5 and Housing's complaint filed on behalf of Real Party in Interest Steven J. Caraudo ("Mr.  
6 Caraudo" or "Real Party in Interest") as follows:

**GENERAL DENIAL**

Pursuant to California Code of Civil Procedure § 431.30(d), Defendant LUCENT generally and specifically denies each and every allegation of the Complaint. LUCENT further denies that Mr. Caraudo has sustained any damages by reason of any act or omission on the part of LUCENT, and specifically denies that Mr. Caraudo is entitled to any recovery from LUCENT in any amount whatsoever on any basis.

**AFFIRMATIVE DEFENSES****FIRST AFFIRMATIVE DEFENSE**

(Business Judgment)

1. As a first affirmative defense, LUCENT avers that its actions with respect to Mr. Caraudo were a legitimate exercise of LUCENT's business judgment which Mr. Caraudo cannot invade.

**SECOND AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

2. As a second affirmative defense, LUCENT avers that Mr. Caraudo's claim for damages is barred, in whole or in part, because, based on information and belief, even if Mr. Caraudo were disabled, he has failed to exercise due diligence in an effort to mitigate his damages.

**THIRD AFFIRMATIVE DEFENSE**

(Essential Functions)

3. As a third affirmative defense, LUCENT avers that Mr. Caraudo's claim is barred, because Mr. Caraudo is unable to perform his essential duties even with reasonable accommodation. Cal. Govt. Code § 12940(a)(1),(2).

**FOURTH AFFIRMATIVE DEFENSE**

(Real Party in Interest's Health or Safety)

4. As a fourth affirmative defense, LUCENT avers that Mr. Caraudo's claim is barred, because Mr. Caraudo is unable to perform his essential duties in a manner that would not endanger his health or safety even with reasonable accommodation. Cal. Govt. Code

§ 12940(a)(1),(2).

## **FIFTH AFFIRMATIVE DEFENSE**

(Health or Safety of Others)

5. As a fifth affirmative defense, LUCENT avers that Mr. Caraudo's claim is barred, because Mr. Caraudo is unable to perform his essential duties in a manner that would not endanger the health or safety of others even with reasonable accommodation. Cal. Govt. Code § 12940(a)(1),(2).

## **SIXTH AFFIRMATIVE DEFENSE**

#### (Undue Hardship)

6. As a sixth affirmative defense, LUCENT avers that Mr. Caraudo's claim is barred, because assuming Mr. Caraudo requested an accommodation, it created an undue hardship for Defendant.

## **SEVENTH AFFIRMATIVE DEFENSE**

(Contractual Obligation)

7. As a seventh affirmative defense, LUCENT avers that Mr. Caraudo's claim is barred, because the applicable collective bargaining agreement incorporates the requirements of Mr. Caraudo's position which could not be altered

## EIGHTH AFFIRMATIVE DEFENSE

### (Business Necessity)

8. As an eighth affirmative defense, LUCENT avers that Mr. Caraudo's claim is barred in whole or in part, on the grounds that LUCENT's actions as they affected Mr. Caraudo were undertaken for lawful, substantial, and justifiable business reasons.

## NINTH AFFIRMATIVE DEFENSE

(Exclusivity of Workers' Compensation Act Remedy)

9. As a ninth affirmative defense, LUCENT avers that Mr. Caraudo's claims are barred, in whole or in part, by the Workers' Compensation Act, which provides Mr. Caraudo's exclusive remedy for his claims.

## **TENTH AFFIRMATIVE DEFENSE**

(Fraud, Malice or Oppression)

3        10. As a tenth affirmative defense, LUCENT avers that any acts or omissions to act by  
4 LUCENT were not the result of fraud, malice or oppression, as such terms are defined by  
5 California Civil Code §3294.

## **ELEVENTH AFFIRMATIVE DEFENSE**

**(LMRA Section 301 Federal Preemption)**

8        11. As an eleventh affirmative defense, LUCENT avers that Plaintiff's claims are pre-  
9        empted in whole or in part by Section 301 of the Labor Management Relations Act, 29 U.S.C.  
10      § 185.

## **TWELFTH AFFIRMATIVE DEFENSE**

(NLRA Section 8(a)(3) Federal Preemption)

13       12. As a twelfth affirmative defense, LUCENT avers that Plaintiff's claims are  
14      preempted in whole or in part by section 8(a)(3) of National Labor Relations Act, 29 U.C.S.C. §  
15      141, et. seq.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Avoidable Consequences)

18       13. As a thirteenth affirmative defense, LUCENT avers that LUCENT had published  
19 adequate policies to prevent unlawful discrimination, harassment and retaliation within the  
20 workplace. LUCENT's policies included internal complaint mechanisms which would lead to  
21 prompt, effective remedial action in the event of a complaint of discrimination, retaliation or  
22 harassment. Mr. Caraudo was aware of these policies. Nonetheless, Mr. Caraudo failed or  
23 refused to utilize said complaint procedures, and thus allegedly suffered from harm that could  
24 have been avoided through reasonable effort or expenditure.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

### (After-Acquired Evidence)

27 14. As a fourteenth affirmative defense, LUCENT avers that, upon information and  
28 belief, Mr. Caraudo has engaged in wrongful conduct during his employment and that conduct

1 provides independent grounds for him being terminated; as a result, his claim for damages  
 2 should be reduced or eliminated accordingly.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 (Reservation)

5 15. As a fifteenth affirmative defense, LUCENT reserves the right to rely on such  
 6 other and further affirmative defenses as may be supported by facts to be determined through full  
 7 and complete discovery and to amend its Answer to assert such additional affirmative defenses.

9 WHEREFORE, Defendant LUCENT prays that:

- 10 1. Real Party In Interest Steven Caraudo take nothing by this Complaint;  
 11 2. Judgment be entered in favor of Defendant; and,  
 12 3. For such other and further relief deemed proper.

14 DATED: July 19, 2007

EPSTEIN BECKER & GREEN, P.C.

15 By:

16 STEVEN R. BLACKBURN  
 17 LESLIE J. MANN  
 18 RACHEL S. HULST

19 Attorneys for Defendant  
 20 LUCENT TECHNOLOGIES INC.

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

1. At the time of service I was at least 18 years of age and **not a party to this legal action**.
  2. My business address is One California Street, 26th Floor, San Francisco, California 94111-5427.
  3. I served copies of the following documents (specify the exact title of each document served): **ANSWER TO COMPLAINT**
  4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Paul R. Ramsey Susan Saylor Attorneys for the Department  
Department of Fair Employment and  
Housing, Oakland Legal Unit  
1515 Clay Street, Suite 701  
Oakland, CA 94612-1460  
Telephone: (510) 873-6457  
Facsimile: (510) 873-0840

5. a.  **By personal service.** I personally delivered the documents on the date shown below to the persons at the addresses listed above in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and (*specify one*):

(1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown below, or

(2)  placed the envelope for collection and mailing on the date shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

c.  **By overnight delivery.** I enclosed the documents on the date shown below in an envelope or package provided by an overnight delivery carrier and addressed to the person at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

- d.  **By messenger service.** I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in item 4 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this proof of service or be contained in the Declaration of Messenger below.)
  - e.  **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of the persons listed in item 4. No error was reported by the fax machine that I used. A copy of the fax transmission, which I printed out, is attached.
  - f.  **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

10 6. I served the documents by the means described in item 5 on (*date*): July 19, 2007

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12 07/19/07 Virginia Li  
DATE (TYPE OR PRINT NAME)   
(SIGNATURE OF DECLARANT)

13 ||

14 | Page

15 || Page

16 | Page

17 | Page

18 || Page

19 | Page

20 || Page

21

22 || Page

23 || Page

14  
15

CE

$\omega_0$  ||

# EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Susan Saylor (SBN 154592)  
 Department of Fair Employment and Housing  
 Legal Division  
 1515 Clay Street, Suite 701  
 Oakland, CA 94612

FOR COURT USE ONLY

TELEPHONE NO.: (510) 873-6457 FAX NO. (Optional): (510) 873-0840

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Department of Fair Employment and Housing

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda County**

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Northern Division

PLAINTIFF/PETITIONER: Department of Fair Employment and Housing

DEFENDANT/RESPONDENT: Lucent Technologies, Inc.

**NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL**

CASE NUMBER:

RG 07-332892

TO (insert name of party being served): Lucent Technologies, Inc.**NOTICE**

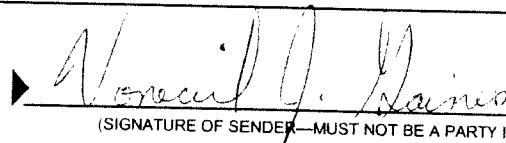
The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: July 03, 2007

Voneciel J. Gaines

(TYPE OR PRINT NAME)



(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**This acknowledges receipt of (*to be completed by sender before mailing*):

1.  A copy of the summons and of the complaint.
2.  Other: (specify): Alternative Dispute Resolution (ADR) Package (7 pages)

*(To be completed by recipient):*

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
ON WHOSE BEHALF THIS FORM IS SIGNED)► (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)